

JAN 26 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SEAN KLAR,

Defendant - Appellant.

No. 04-30167

D.C. No. CR-01-05769-JET

ORDER*

Appeal from the United States District Court
for the Western District of Washington
Jack E. Tanner, Senior Judge, Presiding

Argued and Submitted August 1, 2005
Seattle, Washington

Before: NOONAN, T.G. NELSON, and WARDLAW, Circuit Judges.

The sentencing transcript is unclear as to whether the district court granted or denied the government's motion for a downward departure for substantial assistance under U.S.S.G. § 5K1.1. Klar's sentence is hereby vacated and remanded so that the district court may clarify its sentencing ruling and the basis

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

for its decision regarding the government's 5K1.1 motion for a downward sentencing departure. On remand, the district court may hold such hearings and enter such orders as it determines to be necessary, including, without limitation, modifying its previous sentence.

It is so ORDERED.